

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: NATIONAL)
PRESCRIPTION)
OPIATE LITIGATION,) Civil Action
) Number 1:17MD02804
)
APPLIES TO ALL CASES)
)
)

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TRANSCRIPT OF PROCEEDINGS HAD BEFORE
JUDGE DAN AARON POLSTER
ON WEDNESDAY, JANUARY 30, 2019
- - - - -

Official Court Reporter: Shirle M. Perkins, RDR, CRR
U.S. District Court
801 West Superior, #7-189
Cleveland, OH 44113-1829
(216) 357-7106

Proceedings recorded by mechanical stenography; transcript
produced by computer-aided transcription.

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1 WEDNESDAY SESSION, JANUARY 30, 2019, AT 4:49 P.M.

2 THE CLERK: Hi, Judge. This is Helen. I have
3 you on the line with David Cohen, Cathy Yanni, Mary Hughes,
4 Robert Pitts, Scott Loge.

17:10:50 5 For the AG's, I have Gillian Feiner and Sandy
6 Alexander.

7 For the PEC, I have Steve Skikos, Joe Rice, Jayne
8 Conroy, and Pete Weinberger.

9 For Purdue -- for Purdue, I have Mark Cheffo, Timothy
17:11:09 10 Blank and Debra Gorman.

11 I would like to remind everyone that there's a Court
12 Reporter on this call. Please identify yourself before you
13 speak.

14 Go ahead, Judge.

17:11:19 15 THE COURT: All right.

16 I convened this telephone conference on the record on
17 Purdue's motion to enjoin the Massachusetts Attorney
18 General's Office from violating the MDL protective order,
19 Document 1204. It's not. It's Document 2804 that was filed
17:11:51 20 earlier today.

21 I've reviewed it. I guess for Purdue, Mr. Cheffo,
22 what you're really asking me to do is enjoin Judge
23 Standard's -- she's issued the order. She's issued an order
24 directing the State AG to file an unredacted copy of their
17:12:25 25 complaint no later than Friday, February 1st.

1 So what you're asking me to do is enjoin the
2 Massachusetts Attorney General from complying with a valid
3 State Court Judge's order. And have you provided any
4 authority to me that I -- that I can do that? I didn't see
17:12:50 5 an authority in your motion.

6 MR. CHEFFO: Yes, your Honor.

7 It's Mark Cheffo. Thanks, first of all, for convening
8 on short notice. I know it's been a lot of paper in a short
9 period of time, but I would kind of respectfully kind of
17:13:05 10 reframe what we are and are not asking for.

11 We are -- let me be very clear both for here and for
12 the State Court Judge, who may get the transcript. We are
13 absolutely not asking you to do anything with respect to the
14 Massachusetts State Court. Whether you even have
17:13:21 15 jurisdiction or not it's frankly irrelevant from our
16 perspective because we do not think that this issue relates
17 to anything that the State Court Judge is doing. She --

18 THE COURT: Well, I disagree with you.

19 I'm looking at the last paragraph of the January 28th
17:13:37 20 order. It says, "It is hereby ordered that unredacted copy
21 of the amended complaint be filed with this court" -- that's
22 Judge Sanders -- "and be made available to the public no
23 later than noon on February 1st.

24 MR. CHEFFO: Right. I am --

17:13:55 25 THE COURT: That's in Paragraph 370, which

1 contains private medical indication. That's what she's
2 ordered.

3 So you're asking me to enjoin the Massachusetts
4 Attorney General from complying with that order.

17:14:08 5 MR. CHEFFO: I am not. Your Honor, if you'd
6 just like to --

7 THE COURT: Remind me why you're not. Explain
8 to me.

9 MR. CHEFFO: Yes, your Honor. Absolutely I
17:14:17 10 will.

11 So your Honor heard us, you know, a few weeks ago --
12 here's why we're not. Let me just lay it out as clearly as
13 I can. Obviously, the Court will have some questions.

14 We start with the fact that there's no discovery in
17:14:31 15 Massachusetts that's ongoing. Right? The discovery stayed.
16 What happened was back in July, Ms. Feiner --

17 THE COURT: I don't have time to go back to
18 July. I want to -- January 28th, Judge Sanders issued this
19 order. That was Monday. Now, she's ordered them to do
17:14:53 20 something by Friday.

21 MR. CHEFFO: Here's the issue. The issue is
22 that the -- Ms. Feiner got a lot of, millions of pages, 30
23 millions of pages of documents. You ordered that none of
24 them should be produced --

17:15:06 25 THE COURT: That may -- Mr. Cheffo, that may

1 be. All right? She got documents. She got documents for
2 the MDL. She may have got documents from some other
3 process.

4 No Massachusetts AG is bound by -- by the MDL
17:15:23 5 protective order, but the CMO says or State Court proceeding
6 only up until the time that the State Court Judge issues its
7 own protective order. And my understanding is Judge Sanders
8 issued one and Purdue signed off on it as did the Mass AG.
9 But in any event, Judge Sanders has issued this order and
17:15:43 10 you're asking -- you're asking me -- I've read your motion.
11 You're -- you're saying -- you're asking me to enjoin the
12 Massachusetts AG from filing, publicly filing the unredacted
13 complaint.

14 MR. CHEFFO: What we're asking you to do, your
17:16:04 15 Honor -- we have been -- we've been dealing with this with
16 Special Master Yanni. In fact, last night, the AG filed --

17 THE COURT: I know that. I know that's the
18 process that has been going on for months, but the
19 Massachusetts Judge decided not to wait any longer.

17:16:17 20 MR. CHEFFO: Right.

21 So what we're basically saying is what we think
22 everyone should have been doing, and I don't think the AG
23 necessarily disagrees with this. They are required to file
24 an unredacted complaint. It doesn't mean that they have to
17:16:29 25 violate this Court's protective order. They could file the

1 complaint any time. They could comply with that order.

2 What we're saying is that there's a handful of good
3 number of documents that are being considered by Special
4 Master Yanni. Those documents should work through the
17:16:44 5 process. There's no requirement. They're basically trying
6 to confuse the situation, I think, by saying, "Oh, look. We
7 have no choice." But the complaint is their instrument.
8 They could file the complaint unredacted, which includes all
9 of the -- their initial complaint, the allegation, plus the
17:17:00 10 ones that we've agreed to. What we're basically saying is
11 as to the others, we still have an ongoing process that your
12 Honor is put in place with the P.O. in the MDL. And we're
13 basically saying if you really need to -- either of the two
14 things; go to us and ask the State Court Judge can we have
17:17:15 15 an extra week to work this out, or if you want to file a
16 complaint, you could file any complaint you want as long as
17 it doesn't include the paragraphs that are being considered
18 by Special Master Yanni.

19 So they can comply. They just can't do it in a way,
17:17:31 20 in our view, respectfully, that basically takes your Honor
21 out of the game and takes Special Master Yanni and basically
22 says, "Oh, forget about it. The protective order doesn't
23 apply."

24 So this is a very practical solution. We're basically
17:17:46 25 saying that we went through their complaint, we identified

1 it and basically said we have no issue with the vast number
2 of the confidentiality designations. In fact, those were
3 refiled and unredacted. Now, we have a dispute which we
4 expeditiously tee up. There was a reply filed last night by
17:18:04 5 Ms. Feiner, and Special Master Yanni needs to have an
6 opportunity to basically work through those. Otherwise,
7 kind of what's the point of the protective order?

8 So to the extent that the State wants to file
9 something where they have two very practical solutions which
17:18:18 10 will not in any way get in their way: One is they can
11 jointly ask the Judge for another week or so to work this
12 out; or they can file their complaint but they just can't
13 file documents that have not been determined to be
14 unredacted. And --

17:18:35 15 THE COURT: That's not what the order said.
16 I'm not very happy with the Massachusetts AG either. All
17 right? We had a hearing on December 20th. I thought there
18 was a process -- there was a process put in place. It's
19 been going on. All right? And I don't -- I, you know,
17:18:55 20 Judge Sanders has a right to do what she wants to in her
21 case. But, I don't see where the Massachusetts AG asked to
22 hold off and let the MDL process take its course while it's
23 being done.

24 MR. CHEFFO: Well, your Honor, except for the
17:19:12 25 fact that --

1 THE COURT: Look. I know -- that was close to
2 the Massachusetts AG people. You want to respond to that?

3 MS. FEINER: This is Gillian Feiner.

4 We have been engaged with Purdue in this process for a
17:19:26 5 month now. We've been going back and forth with Special
6 Master Yanni.

7 The motion the State Court Judge ultimately ruled upon
8 was a motion filed by a consortium of media companies, not
9 the Massachusetts AG's Office.

17:19:44 10 Having said that, you know, I don't think that this
11 issue anymore is properly before the MDL Court. The
12 Court --

13 THE COURT: Wait. It is before me. It is
14 before me. It's my job to maintain the integrity of this
17:20:00 15 process.

16 MS. FEINER: I understand that, your Honor.

17 THE COURT: I can do it. And I'll do it, and
18 I can order anyone to do anything I want. Maybe they can
19 challenge it. Maybe they can appeal. But I can order you
17:20:12 20 to do anything I want. I can order a State Court Judge to
21 do anything. Whether it will be upheld or not, I don't
22 know.

23 MS. FEINER: Your Honor, the State Court Judge
24 ordered Purdue to produce the 500 documents that we --

17:20:26 25 THE COURT: I understand that. I understand

1 that. But, I don't see where, anywhere here where you took
2 the position that it is a process in which you were
3 participating in. Special Master Yanni and you thought --

4 MS. FEINER: Your Honor -- I'm sorry.

17:20:48 5 THE COURT: Something is going on that makes
6 it hard to hear in the background. Everyone's got to put
7 their phone on mute unless you're talking. There's no way
8 the Court Reporter can hear this.

9 MS. FEINER: Sorry, your Honor. I lost you.

17:21:13 10 MR. WEINBERGER: Somebody has their speaker
11 on. Please put your speaker -- please put your phone on
12 mute.

13 THE COURT: All right. All right.

14 Ms. Feiner, I'd like you to respond, please.

17:21:30 15 MS. FEINER: Your Honor, I sort of lost you in
16 all of the noise. I'm not sure what I was responding to
17 you.

18 MR. WEINBERGER: Somebody has their phone on
19 speaker. Please put your phone on mute.

17:21:53 20 MS. FEINER: Everyone still there?

21 THE COURT: Yes. Yes.

22 MS. FEINER: I'm sorry, your Honor. I had
23 trouble hearing you.

24 THE COURT: All right.

17:22:04 25 Well, I couldn't hear anything. So it's not your

1 fault. All right.

2 What troubles me is that I don't see where the
3 Massachusetts Attorney General urged Judge Sanders to wait
4 until the MDL process had run its course. It was active
17:22:29 5 discussion between your office and Purdue that Special
6 Master Yanni was coordinating, and she was trying to either
7 work something out or she would have made a ruling as to --
8 and then someone could have appealed it if they didn't like
9 it to me. And that was the process we discussed on December
17:22:52 10 20th, and it was ongoing. And obviously, Judge Sanders
11 could do what she chose to do. She's an independent Judge,
12 but I don't see where your office very clearly took the
13 position that the MDL process should conclude and she
14 shouldn't jump the gun.

17:23:17 15 MS. FEINER: So you -- I'm not sure exactly
16 what you have before you at this point. Unfortunately, we
17 have not had a chance to fully brief this request for
18 injunction, which was just filed today. But, I will tell
19 you that we have been -- we had been fully engaged in the
17:23:34 20 process with Special Master Yanni. We submitted a
21 prehearing memo to our State Court Judge outlining the
22 progress that we had made with Purdue through that process
23 and proposing a schedule in March for motions to -- for
24 Purdue's motions to impound to be filed and heard.

17:23:58 25 Subsequent to that prehearing memo, several third

1 parties filed motions to terminate the impoundment and made
2 arguments in the court of those motions at the last hearing,
3 which our Judge, Judge Sanders, invited.

4 She heard from them, and she ultimately concluded that
17:24:17 5 although Purdue made its arguments in the two hours of that
6 hearing, that she should let the MDL process conclude, she
7 concluded that even if the Special Master were to find that
8 the documents had properly been designated confidential for
9 purposes of discovery, that was not dispositive as to her
17:24:44 10 obligations under the Massachusetts Rules of Impoundment.
11 And so she acted accordingly.

12 She made that ruling, and she ordered Purdue to
13 produce those records to sort of -- and I think she said
14 this expressly in her order to disentangle herself from the
17:25:04 15 MDL proceedings. She felt that she needed -- I think I
16 inferred this from her order -- that the public interest
17 outweighed Purdue's interests in protecting itself from
18 embarrassment.

19 I think she also had real concerns about the fact that
17:25:19 20 there was significant delay in this process, in the State
21 Court process and the --

22 THE COURT: Well, I don't need to
23 characterize.

24 What position did the Massachusetts Attorney General
17:25:29 25 take when the third party filed the motion terminating

1 impoundment? What position --

2 MS. FEINER: She --

3 THE COURT: -- what position did the
4 Massachusetts AG take?

17:25:40 5 MS. FEINER: We did not file a written
6 opposition to Purdue's motion to impound. We have suggested
7 that the Court bump out the hearing on that because of the
8 ongoing MDL process, but the Court ultimately found that,
9 you know, her constitutional reason she couldn't wait for
17:26:02 10 that process to conclude.

11 THE COURT: All right.

12 MR. CHEFFO: That's just not true. We asked
13 for an adjournment, Gillian, and you said no, so.

14 MS. FEINER: The Court -- actually we don't
17:26:14 15 have the power to say no. We wanted the hearing to go on so
16 that we could apprise the Court of the status of -- this is
17 State AG litigation, and we want the Court to know what's
18 going on, and we have an interest in moving it forward.
19 But, ultimately, that adjournment was rejected by the Judge,
17:26:32 20 and also the other parties who sought to terminate the
21 impoundment filed letters.

22 So I think that characterization -- informing the
23 Court of what's going on and seeking to be heard is
24 different than actively seeking to terminate the
17:26:49 25 impoundment. That was something that was done by members of

1 the press and a nonprofit group called Learn to Cope.

2 MR. CHEFFO: This is where the gamesmanship is
3 so frustrating. I've never seen, frankly, a situation where
4 someone affirmatively avoids a Judge's ruling.

17:27:04 5 When you start with a -- this is where we start.
6 There was a lot of benefit when the AG's office was able to
7 get our 35 million pages of documents. Frankly, there's no
8 discovery right now in Massachusetts. They're not producing
9 anything --

17:27:19 10 THE COURT: Hold on. Mark Cheffo, I want to
11 go back to my first question.

12 MR. CHEFFO: Yes.

13 THE COURT: You were asking me to tell a
14 countermand a State Court Judge's order.

17:27:31 15 MR. CHEFFO: I'm not --

16 THE COURT: Well, I don't -- you haven't
17 explained why you're not.

18 MR. CHEFFO: Let me tell you.

19 THE COURT: It was very clear. All right?

17:27:38 20 MR. CHEFFO: Let me tell your Honor what I am
21 asking specifically.

22 THE COURT: Well, you --

23 MR. CHEFFO: I'm sorry.

24 THE COURT: -- you answered the question
17:27:46 25 before. You said well, the Massachusetts AG cannot fully

1 comply or they can jointly go in with you and ask Judge
2 Sanders for a postponement. Okay?

3 MR. CHEFFO: They can, your Honor --

4 THE COURT: They can't.

17:28:04 5 MR. CHEFFO: I'm sorry. I apologize for
6 talking over you. I'm on a speaker phone, too.

7 Look. Here's the thing. If you'll give me 30
8 seconds, I'll tell you why we're not asking for any
9 disobeying of any orders or any injunctions.

17:28:15 10 But Ms. Feiner signed the protective order, said, "I
11 solemnly promise that I will not to disclose in any manner
12 any information or item that is subject to protective order
13 to any person or entity, except in strict compliance with
14 the provisions of the protective order."

17:28:29 15 And then it goes on. And then there's a dispute
16 resolution process. Right? So they have put this
17 information voluntarily into a complaint. We've now
18 basically said --

19 THE COURT: Hold it. The CMO also says that
17:28:43 20 once -- if it's in the State Court litigation, once the
21 State Court Judge issues his or her own protective order,
22 those are the rules that apply to that court in that case.
23 And that's what Judge Sanders has done. But I don't -- back
24 to the last sentence, Judge Sanders has ordered them to file
17:29:05 25 an unredacted copy of this complaint and make it public no

1 later than noon on Friday.

2 MR. CHEFFO: Right. File an unredacted copy
3 of the complaint that doesn't include these provisions until
4 Special Master Yanni just has to do with --

17:29:20 5 THE COURT: No, then it's not unredacted.
6 Then it's redacted.

7 MR. CHEFFO: No, no, no. She can file an
8 unredacted but not including these complaints. Take -- use
9 the Word processor, take it out. And if it turns out in a
17:29:34 10 week that --

11 THE COURT: Well, no, no, no. Then you're
12 rewriting -- then they're filing a new document. It's not
13 the amended complaint. They've already lodged the amended
14 complaint with Judge Sanders. She knows the documents.
17:29:48 15 She's seen it.

16 What you're now -- they've got to file a second
17 amended complaint that takes out sections of their amended
18 complaint.

19 MR. CHEFFO: Your Honor, that's the only --
17:30:00 20 that's the only fair result here because otherwise your
21 order essentially --

22 THE COURT: That isn't what this Judge has
23 ordered. All right.

24 MR. CHEFFO: They could comply with it by
17:30:12 25 doing that. They can easily comply with both her order and

1 with your order if they basically -- look. A lot of these
2 documents would never have been produced in Massachusetts,
3 for example, per se. Right? There's 30 million documents
4 that the MDL lawyers, who were very aggressive, as you know,
17:30:27 5 have gotten.

6 Ms. Feiner said, "Look, I will follow the rules," and
7 then basically in our view, didn't follow the rules. And
8 now basically saying, "Because we didn't follow the rules,
9 we voluntarily put this information into a complaint, that
17:30:40 10 oh, my gosh we have nothing to do about it." So --

11 THE COURT: Apparently these documents,
12 there's a protective order. I haven't even seen it.
13 There's a protective order that Judge Sanders has entered,
14 and apparently you -- Purdue signed off on it and so did the
17:30:57 15 Massachusetts AG and --

16 MR. CHEFFO: We did.

17 THE COURT: -- determined that, you know,
18 these documents, that there's no violation of her protective
19 order for Massachusetts to file this amended complaint.

17:31:13 20 MR. CHEFFO: Your Honor, here's what's
21 different, though.

22 We're not arguing about documents. Those initial
23 conference -- it was a lot of documents that were produced
24 in connection with the civil investigation. Right? And
17:31:23 25 those are all subject and produced pursuant.

1 And this is the problem, which is where we're going to
2 run into this across the country if you allow Massachusetts
3 to do this. Because we did not produce these documents to
4 the Massachusetts AG. They said when these are special
17:31:39 5 circumstance, they didn't file any document requests. We
6 didn't produce them. We would not have produced a lot of
7 these. They're not relevant to those claims, but we
8 basically said, Gillian --

9 THE COURT: Are you saying the protective --
17:31:52 10 the protective order that Judge Sanders has for her
11 litigation?

12 MR. CHEFFO: I think those apply to documents
13 that are produced or documents that are appropriately within
14 the scope of the MDL protective order.

17:32:06 15 So what we -- we agree that, again, the Judge can
16 apply her protective order to documents that are
17 appropriately produced there, but otherwise, you didn't say,
18 right, if the doc -- someone finds, you know, this
19 incredibly clear document and takes their documents to some
17:32:22 20 other court that had some other protective order, that
21 everything in the MDL goes away. I mean that's --

22 THE COURT: The only -- I can't control what a
23 State Court Judge does in his or her case. All right?
24 They've got a right to do what they want.

17:32:41 25 MR. CHEFFO: Right. But you can control

1 the --

2 THE COURT: Judge Sanders has a different
3 protective order. And apparently, these documents that you
4 feel should not be disclosed, Judge Sanders had -- a
17:32:57 5 disclosure doesn't violate her protective order. She's made
6 that determination.

7 MR. CHEFFO: Judge, here's the difference.
8 This is kind of like, you know, if this was a criminal case,
9 we'd be talking about fruit of the forbidden tree. These
17:33:09 10 are not documents. We're not coming to you in connection
11 with a production we made in Massachusetts. These were
12 documents that the Massachusetts AG only has because you
13 have them in your court, and you set some rules about using
14 those documents.

17:33:22 15 And if someone could take those documents and all the
16 rules and then just put them in some other litigation and
17 then say, "Judge Polster no longer has anything to say and
18 nothing to do with these," then kind of what's the point of
19 the protective order?

17:33:35 20 So that's the issue here. We are only saying you have
21 jurisdiction over Ms. Feiner and you have jurisdiction over
22 the 30-plus million documents, and what we're saying is --

23 THE COURT: No, I don't have -- I don't have
24 jurisdiction over Judge Sanders. And my order clearly said
17:33:51 25 that if in the case of the State Court lawsuit, once that

1 State Court Judge issues a protective order, that's what
2 governs the documents in that case. They take --

3 MR. CHEFFO: I don't think that --

4 THE COURT: Well, that's the only way that I
17:34:12 5 can -- that's the only clear -- the only way I interpret my
6 order.

7 MR. WEINBERGER: Your Honor, this is Pete
8 Weinberger.

9 I think it should be pointed out that that provision
17:34:22 10 in the Federal Court regarding State Court, state/federal
11 coordination was a negotiating document, negotiated with
12 Purdue's counsel, that ultimately got entered in by you in
13 the MDL.

14 So it wasn't that Purdue and Mr. Cheffo and his team
17:34:44 15 did not have input into that state/federal coordination
16 order. They indeed did.

17 MR. CHEFFO: We we're not saying it was jammed
18 down our throat, Pete. We know that we signed it.

19 I'm just saying when you read it fairly and look at
17:34:59 20 the consequence, there's no way -- I don't think anyone
21 could argue this would be a fair result. Right? That you
22 could take 30 million documents, take them out of the court,
23 go put them in the complaint, and then, you know -- if
24 that's true, why did the state even file their response with
17:35:14 25 Special Master Yanni? Why are we going through the process?

1 Why did your Honor rule on December 20th that counsel should
2 not disclose any of these orders --

3 THE COURT: Mr. Cheffo, it's because no one
4 wanted to be in this position. All right? Where it
17:35:32 5 looked -- where they were trying to comply with the MDL
6 protocol and what the State Court Judge wanted to do. And
7 again, if there could have been an agreement, there wouldn't
8 have been any dispute, but a Judge decided not to wait.
9 That's her call.

17:35:54 10 MR. CHEFFO: Because the State didn't oppose
11 it.

12 THE COURT: She chose not to wait. Well --

13 MR. CHEFFO: The State didn't ask for any
14 time, and the State now basically -- the State.

17:36:04 15 THE COURT: The State initially asked for
16 March. I mean whether the State, you know, as I said, I
17 would have preferred for Massachusetts to be a little more
18 vigorous in pushing back against Judge Sanders. Whether it
19 would have made a difference or not, I don't know. But, she
17:36:19 20 didn't.

21 MR. CHEFFO: Your Honor --

22 THE COURT: And so --

23 MR. WEINBERGER: Your Honor --

24 MR. CHEFFO: Another thing I'll say, your
17:36:26 25 Honor, it sounds like Mr. -- I apologize, you know, just the

1 consequence, you know, I said pretty much, you know, you're
2 going to rule obviously in the way you think is best as you
3 always do, and we'll, you know, honor that ruling. But I'm
4 going to tell you once this -- if this happens, it's going
5 to be exactly an incredible news cycle. We've already had
6 the Mass AG all over the news and the press
7 mischaracterizing the documents, frankly, and saying
8 horrible things about the individual Defendants. And that's
9 what this is all about. And you're going to wake up
10 probably tomorrow and see, you know, lots of news stories
11 about this. And that's really what this is all about. And
12 it's, frankly, very frustrating and inherently unfair
13 because, you know, there are supposed to be rules that we
14 all abide by. And I think this is just not -- again,
15 respectfully, kind of a fair resolution to keep these -- you
16 know, because the other reality is we can't respond, right,
17 because they now have those allegations, kind of half --
18 they're talking about it on the press now. Then we have
19 confidential documents. So that's why we have protective
20 orders, and that's, frankly -- I apologize -- why I'm a
21 little animated today. But it's very frustrating because I
22 think we're kind of doing ends around, you know, the spirit
23 and letter of what your Honor intended.

24 THE COURT: Well, I'm not -- I'm not happy
25 either, Mr. Cheffo. I didn't expect we'd be at this point,

1 but I don't -- I can issue the order, but I won't -- I don't
2 expect any court, any court, any Federal Court would uphold
3 me if I enjoin Judge Sanders. That would not be -- I can
4 issue the order, but I don't think the Sixth Circuit would
17:38:12 5 uphold me.

6 MR. CHEFFO: Well especially --

7 THE COURT: What authority do you have to jump
8 in and tell a State Court Judge what she can do in running
9 her trial, her case?

17:38:27 10 MR. CHEFFO: You can order Ms. Feiner not to
11 do it. She signed the protective order.

12 THE COURT: I can't order Ms. Feiner not to
13 comply with Judge Sanders' order. That's the same thing as
14 enjoining Judge Sanders' order.

17:38:42 15 MR. CHEFFO: Well --

16 THE COURT: That's my point.

17 MR. CHEFFO: You also have --

18 THE COURT: That's what you're asking me to
19 do. I would suspect you can circumvent Judge Sanders' order
17:38:51 20 by filing a second amended complaint that's different than
21 your amended complaint of Judge Sanders' order to be filed.

22 So I -- you know; as I said, I could issue that order,
23 but I do not at all expect it will be affirmed, as I don't
24 think I have the authority to do it. And I'm not -- I'm not
17:39:14 25 ordinarily issuing orders that I don't think I have the

1 authority to issue.

2 I don't think any Federal Judge is in that -- does
3 that.

4 MS. FEINER: Your Honor, I filed a petition
17:39:29 5 for a stay in our appeal court, and obviously, that's how it
6 will play out.

7 THE COURT: Well, obviously, a Massachusetts
8 Appellate Court has jurisdiction over Judge Sanders, the
9 same as the Sixth Circuit has jurisdiction over me. And if
17:39:44 10 I issue an order and someone's not happy, they can seek a
11 stay from the Court of Appeals. And if the stay is issued,
12 then it stays. That's how things work. But you don't have
13 Federal Judges essentially jumping in and trying to, you
14 know, stay or invalidate State Court orders, in the same way
17:40:05 15 Judge Sanders has no authority to enjoin one of my orders.
16 It's federalism.

17 So I'm going to deny Purdue's motion for Emergency
18 Order to Enjoin the Massachusetts Attorney General, and
19 basically because the effect of that would be to enjoin
17:40:29 20 order of the State Court Judge, and I don't believe I have
21 the authority to do that.

22 So I appreciate everyone's -- everyone's time. It's a
23 lot later where you are than it is where I am, and I
24 appreciate it because I needed to do this today.

17:40:46 25 So thank you very much.

1 MR. CHEFFO: All right. Thank you, your
2 Honor.

3 (Proceedings adjourned at 5:41 p.m.)

4 C E R T I F I C A T E

5 I certify that the foregoing is a correct
6 transcript from the record of proceedings in the
7 above-entitled matter.

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9
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